

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 12-CV-1586 SC
)	
MARKUS WILSON and DOUG COMPEN,)	ORDER GRANTING STAY PENDING
individually and on behalf of)	RESOLUTION OF RELEVANT NINTH
all others similarly situated,)	<u>CIRCUIT CASES</u>
)	
Plaintiffs,)	
)	
v.)	
)	
FRITO-LAY NOTH AMERICA, INC.,)	
)	
Defendant.)	
)	
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)	

The Court now turns to a request by Plaintiffs for a stay in the above captioned case pending the results of a Ninth Circuit case, Jones v. Conagra Foods, Inc., No. 14-16327 (9th Cir. Filed July 14, 2014). ECF Nos. 136. The matter has been fully briefed. See ECF Nos. 139, 141. The Court finds the matter is appropriate for resolution without oral argument under Civil Local Rule 7-1(b).

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). When deciding whether to stay a case, a court should consider "the possible damage which may result from the granting of

1 a stay, the hardship or inequity which a party may suffer in being
2 required to go forward, and the orderly course of justice measured
3 in terms of the simplifying or complicating of issues, proof, and
4 questions of law which could be expected to result from a stay."
5 CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). See also
6 Pardini v. Unilever United States, Case No. 13-cv-01675, ECF No. 59
7 (N.D. Cal. Apr. 15, 2015); Leonhart v. Nature's Path Foods, Inc.,
8 2015 U.S. Dist. LEXIS 73269, *9-10 (N.D. Cal. June 5, 2015)
9 (quoting Gustavson v. Mars, Inc., No. 13-cv-04537-LHK, 2014 U.S.
10 Dist. LEXIS 171736, 2014 WL 6986421, at *2 (N.D. Cal. Dec. 10,
11 2014)).

12 Parties seem to minimally dispute whether a stay is proper
13 with respect to consideration of the motion for class
14 certification. Insofar as it is challenged, the Court finds that
15 the analysis in Pardini largely applies to this case, and on a
16 similar analysis finds a stay of the class action certification
17 motion is appropriate. The Court simply is not convinced that,
18 with respect to the class certification motion, there is any
19 cognizable damage to the parties, hardship beyond merely waiting
20 (discovery is complete and parties are waiting on further expert
21 depositions), or legal complications that disfavor a stay. Rather,
22 the Court agrees with Plaintiffs that a stay here would promote
23 judicial efficiency by requiring the Court to evaluate the issues a
24 single time, minimize supplemental briefings, and avoid duplicate
25 expert depositions. The Court therefore turns to the more disputed
26 matter of whether a stay is appropriate with respect to the motion
27 for summary judgment.

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1 Upon review of the underlying cases cited by Defendant, ECF
2 No. 139 at 4, the Court agrees it would normally not be appropriate
3 to make Defendant wait on the motion for summary judgment when the
4 Court could still move forward on that matter. While the Court
5 agrees with Plaintiffs that there is efficiency in deposing experts
6 a single time, it appears Plaintiffs had an opportunity to gather,
7 review, and present expert opinions in their summary judgment
8 response, ECF No. 133, and thus have already collected whatever
9 evidence they deemed necessary for the issues presented as part of
10 the motion for summary judgment. Thus the Court would normally be
11 inclined to side with Defendant. However, two factual matters
12 successfully persuade the Court that a stay of the entire case is
13 appropriate here.

14 First, Defendant relies on the district court decision
15 appealed in Jones when arguing the merits of its motion for summary
16 judgment here (without any mention that an appeal was pending) --
17 once distinguishing it where it otherwise appeared to be
18 instructive on the legal burdens applicable to the Plaintiffs, and
19 once citing that this case is factually comparable and thus the
20 district court's approach in Jones should be followed. See ECF No.
21 123 at 13, 21. Defendant filed its motion for summary judgment
22 months before filing its opposition to the stay. Thus it is
23 inconsistent for Defendant to suggest that Jones will provide no
24 relevant guidance yet cite as authority to the underlying case
25 being appealed. Defendant cannot have it both ways. Either Jones
26 is not relevant for the purposes of the Court's evaluation of
27 summary judgment or it is. After careful consideration, the Court
28 concludes Jones is likely to be relevant to -- if not dispositive

1 of -- both the motion for class certification and the motion for
2 summary judgment.

3 Second, the Court has reviewed decisions by sister courts
4 within this Judicial District considering whether to grant stays
5 relating to Jones, including Leonhart v. Nature's Path Foods, Inc.,
6 2015 U.S. Dist. LEXIS 73269, *9 (N.D. Cal. June 5, 2015). There, a
7 stay was also granted pursuant to Brazil, a case where a ruling
8 partially on summary judgment in a food case is now pending before
9 the Ninth Circuit. Brazil v. Dole Packaged Foods, LLC, No. 14-
10 17480, (9th Cir. Filed Dec. 18, 2014) (appealing Case No. 12-cv-
11 01831-LHK, 2014 U.S. Dist. LEXIS 169943, 2014 WL 6901867 (N.D. Cal.
12 Dec. 8, 2014). The fifth issue being considered as part of the
13 appeal is whether "the district court err[ed] at summary judgment
14 in ruling Plaintiff failed to provide sufficient evidence of how
15 reasonable consumers would be deceived by Dole's 'all natural'
16 labels[.]" The underlying district court decision and the appeal
17 briefs pending before the Ninth Circuit call directly into question
18 many of the same factual circumstances and points of law Defendant
19 argues merit the grant of summary judgment in this case. Moreover,
20 Defendant cites Brazil in both its original summary judgment motion
21 brief and its summary motion reply brief (again with no indication
22 an appeal was pending). ECF Nos. 123 at 21, 22; 143 at 12-13. As
23 Brazil appears it will be largely if not directly on-point for the
24 summary judgment motion at bar, it would be just as ill advised to
25 proceed with this motion prior to a resolution of Brazil as it
26 would be to proceed on the class certification motion without
27 resolution of Jones.

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1 Analysis of the balancing test factors supports this
2 conclusion. There is little if any damage resulting from granting
3 a stay, as the delay will cause no harm to the merits of the case
4 and no loss of evidence. The hardship associated with a stay is
5 easily justified by the judicial efficiency of hearing the matter
6 only once and reducing the duplication of efforts by counsel to re-
7 brief and re-depose experts. Finally, the Court is greatly aided
8 by having clear guidance largely if not directly on point to help
9 it simplify complex issues of law and adequacy of proof.
10 Therefore, the Court finds all three factors weigh in favor of
11 granting a stay.

12 Accordingly, the Court GRANTS Plaintiffs' motion and STAYS the
13 case pending resolution in Jones and Brazil. The parties are
14 ordered to notify the Court within 14 days of publication of a
15 decision by the Ninth Circuit in Jones and within 14 days of
16 publication of a decision by the Ninth Circuit in Brazil. If the
17 two are not issued contemporaneously, upon request of either party
18 the Court will entertain motions to partially lift the stay and
19 proceed on one motion or the other.

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21 IT IS SO ORDERED.

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23 Dated: July 20, 2015



24 UNITED STATES DISTRICT JUDGE
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